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November 22, 2002

Scott Tocher, Esq.
California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Regulation 18427.1(b)

Dear Scott:

When we were talking on another matter a couple months ago, I mentioned that the FPPC might want to review its "notice language" provided to treasurers by the above-referenced Regulation.

We have received a number of "complaints" from persons who retain us to "fight a proposed FPPC or Secretary of State fine for not filing a late contribution report on time." They point to the notice they received from the treasurer of the committee to whom they contributed which repeats the Regulation 18427.1(b) language. The confusion results as follows.

A contributor makes one contribution of \$10,000 or more during a LCR period. The contributor receives a letter like the attached redacted one.

The contributor reads the first portion of paragraph three and learns it must file a Major Donor Report and somehow learns it is due usually during the next July or January. The contributor notes this on a calendar. The contributor also reads the rest of paragraph three and learns that once it has become a Major Donor "you may be required to file a late contribution report within 24 hours if you make contributions totaling \$1,000 or more to a single candidate or committee during the 16 days before the election" (emphasis added).

These persons feel they have been misled. They explain that they understand that the treasurer has alerted them that they must file a 461 in the future but they believe they have been only told that they "may" be required to file a LCR. They do not understand that they have a current LCR filing obligation for the same contribution that qualified

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them as a Major Donor. They do not understand how a treasurer who knows they have an LCR due immediately would not have told them of the need to file one.

Also, "first time" offenders are frustrated to learn that by relying of "FPPC approved" language and making this understandable mistake, their relevance does not reduce the size of a fine under the FPPC's expedited program.

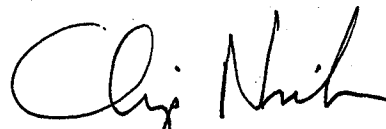
Because of such complaints, when we act as a committee treasurer, we send each contributor two documents (see attached). A letter thanks them for the contribution and tells them either that they might be a Major Donor or they are a Major Donor (depending upon the size of their check) and asks them to read our memorandum. Note on page 3 of the memo under "Late Reports," we say: "If this contribution or independent expenditure is what makes the person a Major Donor, a Late Report is due," and on page 4 of the memo we quote the language of 18427.1(b), but we put an asterisk by the word "may" and clarify our position on this verb at the end of that page.

We ask the Commission to consider appropriate amendments to this regulation.

A related but a separate concern is whether Government Code section 84105 should be amended to require 24 hour notification by committees that receive contributions of \$5,000 or more during late contribution periods. We would support such an amendment and lobby the Legislature for its adoption. Alternatively, legislation should require first time Major Donors to be responsible to file LCRs only within 48 hours of being informed by the recipient committee of their obligation.

I think our reasons for making this request are understandable, but if you have any questions, please do not hesitate to contact me.

Very truly yours,



Vigo G. Nielsen, Jr.

VGN/cll
Enclosures

Greetings:

I serve as campaign counsel for the above-named committee. First let me thank you for your recent contribution.

This letter is being sent relative to California law which requires any candidate or committee which receives contributions of \$5,000 or more to notify the contributor that they may be a major donor and have to file campaign reports on their own.

Specifically, if your contribution(s) to this committee and to other California state or local committees total(s) \$10,000 or more in a calendar year, California law requires you to file a Major Donor Committee Campaign Statement (Form 461). The deadline and location for filing this statement will depend upon the timing and type of contribution(s) you have made. In addition, once you become a major donor, you may be required to file a late contribution report within 24 hours if you make contributions totaling \$1,000 or more to a single candidate or committee during the 16 days before an election.

Failure to file campaign statements may result in late filing penalties (\$10/day) and fines (up to \$5,000/violation). For more information, you may contact your county clerk or the Fair Political Practices Commission at (916) 322-3660 or refer to their website at www.fppc.ca.gov.

Additionally, if you make contributions of \$50,000 or more in a calendar year in California and some or all of those contributions are to state candidates, committees or ballot measures, you are required to file your Form 461 electronically with the Secretary of State. For more information on the electronic filing requirements, contact the Secretary of State's office at (916) 653-6224.

If you desire further assistance in completing the campaign statements or electronic filing, our office may be of assistance. Please call us at (916) 442-2952 for additional information.

Again, thank you for your generous contribution.

[\$10K LETTER: CURRENT DATE HERE]

TO: [(1) NAME AND (2) ADDRESS OF CONTRIBUTOR AND IF ENTITY (3) THEN PUT "ATTN: [CONTACT PERSON] OR "ATTN: GENERAL COUNSEL'S OFFICE"]

FROM: [ATTY]

RE: Your Filing Obligations as a Contributor

Thank you for your contribution of \$ _____ to the following committee. The information provided below is for your reporting purposes:

**[Full name of committee]
[street, city/state address]
FPPC ID# _____**

[OPTION #1]

Because you contributed \$10,000 or more, you will be required to file your own campaign disclosure report, as described more fully in the enclosed memorandum.

[OPTION #2]

Because of your contribution, you may be required to file your own campaign disclosure report, and you should closely review the legal requirements described in the enclosed memorandum.

California is one of only a few states which requires campaign contributors, as well as candidates and PACs, to file public statements disclosing their campaign contributions.

You are therefore responsible for reviewing this and your other campaign contributions to determine whether you have any filing obligations in California. By law, we are required to send you this letter and memorandum, even if you have retained this law firm to prepare your reports.

If you have any questions about your filing obligations, contact the Fair Political Practices Commission at www.fppc.ca.gov or (916) 322-5660.

[ATTY/sec]

[client #]

PLF 521 (10/22/02)

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MAJOR DONOR FILING OBLIGATIONS¹

(Updated October 2002)

Who must file

Persons -- including corporations, nonprofit organizations, partnerships and individuals -- which make \$10,000 or more in campaign contributions to California state and/or local candidates, ballot measures, PACs and/or political parties in a calendar year qualify as "Major Donors" and must thereafter file Major Donor Reports (FPPC Form 461) and sometime other reports. (Cal. Govt. Code section 82013(c).)

When are reports due

1. Contributors must file reports only upon qualifying as a Major Donor in a given calendar year.
2. For contributions made during even-numbered years, Major Donors may be required to file once or twice a year, and more if you only contribute within one city. A mid-year report, due July 31, covers contributions made from January 1 through June 30. A year-end report, due the following January 31, covers contributions made from either January 1 (if Major Donors status was not reached by June 30) or July 1 through December 31. (Section 84200(b).)
3. For contributions made during odd-numbered years, Major Donors may be required to file up to four times a year, and more if you only contributed within one city. In addition to the semi-annual reports filed in even-numbered years, Major Donors may be required to file quarterly reports as well, if they meet certain thresholds with respect to contributions to state candidates during the first and/or third quarter. (Section 84202.7.) The year-end report may be due earlier than in even-numbered years (January 31), again depending on whether certain thresholds are met.
4. If all of a Major Donor's contributions go to candidates or ballot measures in a single city, then the contributor must file additional reports on pre-election deadlines. (Section 84200.5(e).) (For these purposes, San Francisco is considered a "county".) Major Donors which make contributions in more than one city or county, or to statewide candidates, only file Form 461 semi-annually or quarterly, as described above.

¹The suggested notice that committees should send to contributors, as adopted by the California Fair Political Practices Commission, is provided at the end of this memorandum.

5. Reports must be postmarked by the filing deadline. If the filing deadline falls on a weekend or holiday, the report must be postmarked by the next business day. (The second pre-election filing deadline for city major donors require delivery via over-night delivery service.)

6. Additional reports may be required to immediately to disclose contributions made during the last 16 days before an election. See page 3.

Where are reports filed

1. Major Donors which make contributions in more than one city or county, or to statewide candidates, file reports in either three or four places (section 84215(a)):

1) Original signed report and one copy:

Secretary of State
Political Reform Division
P. O. Box 1467
Sacramento, CA 95812-1467
FAX: (916) 653-5045

2) Two copies:

Los Angeles County
Registrar-Recorder
Campaign Reporting Unit
12400 Imperial Highway
Norwalk, CA 90650
FAX: (562) 651-2548

3) Two copies:

San Francisco Department
of Elections
One Dr. Carlton B. Goodlet Place
Room 48
San Francisco, CA 94102-4635
FAX: (415) 554-7344

4) Two copies:

Registrar of Voters in County
where the Major Donor is
domiciled, unless it is Los Angeles,
San Francisco or out-of-
state (in which cases the
Major Donor only files reports with the
three filing officers listed above).

2. Major Donors which make contributions in a single county only file reports with the clerk of the county (Section 84215(d).) or if only contribute in a single city only file reports with the applicable city clerk. (Section 84215(e).) Major Donors which only contribute to San Francisco candidate or measures file-reports with San Francisco Department of Elections, not the Ethics Commission.

3. Major Donors which make contributions totaling \$50,000 or more in any calendar year and some or all of those contributions are to state candidates, committees or ballot measures must file their reports both electronically (with the Secretary of State only) and on paper (with all filing officers). For more information on the electronic filing requirements, contact the Secretary of State's office at (916) 653-6224.

4. We recommend that Major Donors file their paper reports via certified mail, or ask the filing officers to stamp an enclosed copy of a transmittal letter, as proof of filing. (The Secretary of State sends an e-mail confirmation of electronic reports.)

What is reported

1. The report lists monetary and non-monetary (e.g., fundraisers, mailings, etc.) contributions, independent expenditures, loans and loan guarantees to candidates, ballot measures, political parties and PACs. (Section 84211.)

2. Only contributions of \$100 or more must be itemized; all contributions aggregating \$99 or less to a single candidate or committee during the calendar year are reported together in a lump sum.

3. Importantly, contributions from an individual and a business entity, or from two or more business entities, must be disclosed on the same Major Donor Report if the individual or entity "in fact directs and controls" the contributions of the other entity or for state candidate contributions also if one contributor owns 51% of the other contributor. (Section 85311.)

4. In addition to disclosing contributions, Major Donor Reports list "independent expenditures" which support or oppose candidates or ballot measures. Additionally, "persons" which make independent expenditures of \$1,000 or more per candidate or ballot measure committee must also report these expenditures on an FPPC Form 465, which is filed at the same time and at the same place where the candidate or measure (to which the independent expenditure relates) files its campaign reports. (Govt. Code section 84203.5.)

"Late Reports" and when they are due

1. If a Major Donor makes a contribution or independent expenditure of \$1,000 or more during the 16 days preceding an election to support a candidate or ballot measure on that ballot, it must file a special "Late Report" (FPPC Forms 496 and 497) within 24 hours. (Sections 84203 & 84204.) If this contribution or independent expenditure is what makes the "person" a Major Donor, a "Late Report" is due.

2. Late Contribution Reports are filed in the same places as Major Donor Reports, but must be sent via guaranteed overnight delivery service or fax. Major Donors which cross the \$50,000 threshold discussed above must also file these reports electronically within 24 hours.

3. Late Independent Expenditure Reports are filed when \$1,000 or more is spent even if total contributions and independent expenditures are less than \$10,000 in that year and are filed in the same place where the candidate or measure being supported or opposed files its campaign reports; they must also be sent via guaranteed overnight delivery service or by fax.

What are the penalties for late or non-filing

1. The Secretary of State imposes late filing penalties of \$10 per day, and waives these penalties only under very unusual circumstances.
2. The Fair Political Practices Commission usually also fines non-filers, with a maximum of up to \$5,000 per violation or the amount not reported, whichever is greater.

Assistance on Preparing and Filing these Reports

You may obtain blank filing forms and interactive forms, as well as further information, from the FPPC's website (www.fppc.ca.gov). You may call the FPPC at (916) 322-5660 if you have any questions about your filing obligations.

FPPC's official notice to you

The following is the FPPC's approved language by which committees like this one are recommended to use to inform you of your filing obligations:

If your contribution(s) to this committee and to other California state or local committees total(s) \$10,000 or more in a calendar year, California law requires you to file a Major Donor Committee Campaign Statement (Form 461). The deadline and location for filing this statement will depend upon the timing and type of contribution(s) you have made. In addition, once you become a major donor, you may* be required to file a late contribution report within 24 hours if you make contributions totaling \$1,000 or more to a single candidate or committee during the 16 days before an election.

Failure to file campaign statements may result in late filing penalties (\$10/day) and fines (up to \$5,000/violation). For more information, contact the Fair Political Practices Commission at (916)322-5660 or refer to their website: www.fppc.ca.gov.

Additionally, if you make contributions of \$50,000 or more in a calendar year in California you are required to file your Form 461 electronically with the Secretary of State.

*We find the use of the word "may" to be misleading. If the \$1,000 or more contribution is to a candidate or measure on that ballot, you **MUST** file the Late Report.